

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2306 OF 2006**

M/s.Vaishanvi Rasayan Pvt.Ltd.

...Applicant

vs.

M/s.Impressions Pharmachem Pvt.Ltd.

...Respondent

Mr.S.A.Joshi i/b Mr.S.M.Oak for the Applicant
Ms Monica Sakhrani for Respondent No.1
Mr.U.V.Nikam,A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : SEPTEMBER 28,2006.**

P.C.:

1. Heard Advocates appearing for the parties. The Applicant is arraigned as an accused in the complaint filed under section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the said Act) by the first Respondent. The said complaint is pending in the court of learned Metropolitan Magistrate, 17th Court, Mazgaon. A prayer is made in this Application for transfer of the case on the ground that the first Respondent has filed seven other complaints under section 138 of the said Act against the Applicant in the Court of Chief Judicial Magistrate, Alibag, District Raigad and the said complaints are pending. The ground on which the transfer is sought is that the Applicant is having office at M.I.D.C., Taloja, Taluka Panvel, District Raigad and since the representative of the first Respondent is attending seven other complaints filed in the court of Chief Judicial Magistrate, Alibag, it will be convenient for both the parties if the pending complaint in the court of

Metropolitan Magistrate is transferred to the court at Chief
Judicial Magistrate, Alibag.

2. The learned Advocate for the Applicant submitted that at any stage of the complaint, the same can be transferred under the provisions of section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code). The Application is opposed by the Advocate for the first Respondent by filing a reply. It is stated that this Application is nothing but abuse of process of the court. It is stated that the complaint which is pending in court of Metropolitan Magistrate is almost at final stage and whereas in the complaints pending in the court of Chief Judicial Magistrate, Alibag, even plea has not been recorded. Reliance is placed on the Roznama of the proceedings of the case.

3. I have considered the submissions. Perusal of the Roznama of the pending case in the court of Metropolitan Magistrate, 20th Court, Mazgaon shows that on 26th October 2005 Affidavit of examination-in-chief of the witness of the complainant was filed. Thereafter, the Advocate for the Applicant cross examined the witness of the complainant. The roznama discloses that on 23rd February 2006 after completion of the cross examination, the first Respondent closed the evidence. On 9th March 2006 the case was fixed for recording of the statement under section 313 of the said Code. On the request made by the Applicant, the case was fixed on 10th March 2006.

On 10th March 2006 the learned Trial Judge granted exemption to the Applicant as a last chance and the case was kept on 14th March 2006. Again on that day the case was adjourned as the Applicant was absent. On 16th March 2006, a statement under section 313 of the said Code was recorded. On 29th March 2006 adjournment was sought on behalf of the Applicant.

4. On 20th April 2006 the learned Trial Judge adjourned the case on the request made by the Applicant for recording defence evidence. The Applicant was directed to pay costs of Rs.2,000/-. Again on 22nd May 2006, an adjournment was granted to the Applicant. Thereafter, the case was fixed on 23rd June 2006 and 24th July 2006 before the Trial Court. The present Application in this Court was filed on 16th June 2006. It is pertinent to note that in this Application it is not even disclosed that after recording of evidence on the side of the complainant, the statement under section 313 of the said Code has been recorded. The Applicant ought to have disclosed the said facts in the Application.

5. No case is made out for passing the order of transfer at this stage when the hearing of the case is on the verge of conclusion. Application is rejected.

JUDGE